

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 7, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Capital One Bank (USA) N.A. v. Kessler
Case No. CV G 09-2220

Hearing Date: April 7, 2010 Department Fifteen **9:00 a.m.**

Plaintiff Capital One Bank's unopposed motion to amend the complaint is **GRANTED**. (Code Civ. Proc., 473.) The Court, on its own motion, **STRIKES** Plaintiff's amended complaint filed with the motion to amend. The amended complaint was file-stamped on January 19, 2010, due to clerical error. Plaintiff shall file and serve the first amended complaint for money **by April 15, 2010**. Defendant shall file her answer **by April 30, 2010**. (Code Civ. Proc., § 471.5, subd. (a).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, is required. Plaintiff shall also serve a copy of the tentative ruling on defendant.

TENTATIVE RULING

Case: Salas v. City of Woodland
Case No. CV CV 08-2019

Hearing Date: April 7, 2010 Department Fifteen **9:00 a.m.**

City of Woodland's evidentiary objections to the Declaration of David Salas: Objection numbers 2, 4, 5, and 6 are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

David Salas' evidentiary objections to the Declaration of Westley Schroeder: All evidentiary objections are **OVERRULED**.

City of Woodland's motion for summary judgment or, in the alternative, summary adjudication: This motion is **DENIED**. Triable issues of fact exist about whether after May 19, 2008, David Salas could reasonably have been accommodated so that he could perform the essential functions of a Tree Trimmer with his work restrictions. (Salas Declaration ¶¶ 2-7; Exhibits D and E to Buck Declaration; Schroeder Declaration ¶ 17.)

The City contends that Mr. Salas cannot show that he could perform the essential function of climbing trees. In the 1990s through early 2007, the City did not require its Tree Trimmers to climb trees; instead Tree Trimmers used the City's aerial/bucket truck to trim trees. (Sheffield Declaration ¶ 15; Schroeder Declaration ¶ 5.) Although it appears that the City now requires its Tree Trimmers to climb trees, there is no evidence that in May, 2008, the City required Tree Trimmers to climb trees. (Sheffield Depo. 14: 10-19; Schroeder Depo. 16: 2-13; Exhibit A to Schroeder Declaration.) Moreover, it has not been established that Mr. Salas could not climb trees, with or without an accommodation. (Salas Declaration ¶ 7.)

The City also contends that Mr. Salas could not be on call because of his medical restrictions, and being on call is an essential job function for a Tree Trimmer. The evidence cited in support of this contention is problematic. Robert Sheffield does not state facts to support the conclusion in paragraph 12 of his declaration. Neither Mr. Sheffield nor Westley Schroeder's declaration states that a Tree Trimmer who is on call could not use the City's aerial truck. Mr. Schroeder states that when Mr. Salas was on modified duty, he was exempt from on-call duty. However, Mr. Salas was subject to greater restrictions when he was on modified duty than after May 19, 2008. (Exhibits A, C, D, and E to Buck Declaration.)

Defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.